

EXHIBIT 4

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6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**
8 **OAKLAND DIVISION**

9
10 IN RE COLLEGE ATHLETE NIL
11 LITIGATION

12 Case No. 4:20-cv-03919-CW

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14 **DECLARATION OF BRYAN L. PERRY**
15 **IN SUPPORT OF REDACTED AND**
16 **SEALED RECORDS UNDER THE JOINT**
17 **ADMINISTRATIVE OMNIBUS**
18 **MOTION TO SEAL**

19 Trial Date: 2025-01-27
20 Judge: Hon. Claudia Wilken

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22 I, Bryan L. Perry, declare as follows:

23 1. I am the General Counsel for the Northern Illinois University.
24 2. Pursuant to Local Rule 79-5(f), as modified by the Stipulation and Order Modifying
25 Sealing Procedures, Northern Illinois University (“University” or “NIU”) submits this Declaration
26 in Support of Redacted and Sealed Records under the Joint Administrative Omnibus Motion to
27 Seal.

28 3. Counsel for Party NCAA (“NCAA Counsel”) informed NIU of materials that were
29 provisionally filed by the parties in redacted form and under seal, and which includes information
30 from NIU that was designated as Counsel Only confidential during discovery. During discovery,
31 NIU responded to a subpoena for records of name, image and likeness (NIL) agreements for its
32 student athletes. The University complied with the subpoena and produced copies of the NIL
33 agreements. According to NCAA Counsel, portions of that production were used in “Kilaru Decl.
34 Ex. 1, Expert Report of Catherine Tucker [ECF No. 251-1], on p. 224 n. 594, and designated for
35 Counsel Only confidentiality. In particular, NCAA Counsel informed NIU that the following
36 information was redacted and filed under seal at Kilaru Decl. Ex. 1, Expert Report of Catherine
37 Tucker [ECF No. 251-1], p. 224 Par. 263 (c) and designated for Counsel Only confidentiality:

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39 [SENTENCE REDACTED].594 [REDACTED] did not report his earnings with
 40 this deal, but this deal is assigned a value of \$1 in the Rascher Report. Evaluating
 41 whether this deal would have existed, and if so the value of this deal in the before
 42 period would require, among other factors, to be able to estimate the value of the
 43 commission [REDACTED] would have been willing to pay in the before period
 44 and the number of [REDACTED] that would have been sold, which in turn would
 45 depend on the popularity of both [REDACTED] at the time and on their efforts to
 46 promote the [REDACTED].
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49 4. The redacted and sealed information identified above represents NIU's confidential
 50 materials ("Materials") in this matter. NIU is a non-party designating party that seeks to keep its
 51 "Materials" redacted and under seal, as provisionally done by the parties earlier in this case. But
 52 for this litigation, these NIU Materials would not be subject to public disclosure under federal
 53 and/or state law, as described below.

54 5. NIU's Materials qualify as "education records" under the federal Family Educational
 55 Rights and Privacy Act ("FERPA") (20 U.S.C. § 1232g, and its implementing regulations at 34
 56 CFR Part 99). FERPA defines "education records" as "those records that are: (1) Directly related
 57 to a student; and (2) Maintained by an educational agency or institution or by a party acting for the
 58 agency or institution." 34 CFR 99.3. In summary, FERPA protects the privacy of student education
 59 records and prohibits unauthorized disclosure of education records and/or the information
 60 contained therein to the public.

61 6. The Illinois Student Athlete Endorsement Rights Act (110 ILCS 190/1, *et seq.*) governs a
 62 collegiate student-athlete's right and ability to "earn compensation, commensurate with market
 63 value, for the use of the name, image, likeness, or voice of the student-athlete while enrolled at a
 64 postsecondary educational institution and obtain and retain an agent for any matter or activity
 65 relating to such compensation." 110 ILCS 190/10(a). NIU student athletes who enter into NIL
 66 agreements equal to or exceeding \$500 in value, or agent representation agreements, are required
 67 to provide NIU with copies of these agreements under this Illinois law. 110 ILCS 190/20(c); 110
 68 ILCS 110 ILCS 190/15(f). Since the University maintains these NIL agreements under Illinois
 69 law, and these agreements are directly related to student athletes, they meet the definition of
 70 "education records" under FERPA and are protected from disclosure to the public under that
 71 federal law.

72 7. In addition, public requests for copies of these NIL agreements under the Illinois Freedom
73 of Information Act (FOIA) (5 ILCS 140/1, *et seq.*) have been denied by the University. In
74 summary, Illinois FOIA requires public institutions of higher education (and other “public bodies”)
75 to release “public records” to the public upon request. The Illinois FOIA law defines “public
76 record” as “all records, ..., recorded information and all other documentary materials pertaining
77 to the transaction of public business, regardless of physical form or characteristics, having been
78 prepared by or for, or having been or being used by, received by, in the possession of, or under the
79 control of any public body.” 5 ILCS 140/2(c). However, Illinois FOIA at 5 ILCS 140/7(1)(c) also
80 exempts the following from public disclosure:

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82 Personal information contained within public records, the disclosure of which
83 would constitute a clearly unwarranted invasion of personal privacy, unless the
84 disclosure is consented to in writing by the individual subjects of the information.
85 “Unwarranted invasion of personal privacy” means the disclosure of information
86 that is highly personal or objectionable to a reasonable person and in which the
87 subject's right to privacy outweighs any legitimate public interest in obtaining the
88 information. The disclosure of information that bears on the public duties of public
89 employees and officials shall not be considered an invasion of personal privacy.

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92 8. Since NIL agreements are a business arrangement between a student athlete and an outside
93 entity that does not involve NIU, the University has denied public requests for copies of student
94 athlete NIL agreements because (1) they do not pertain to the transaction of public business and
95 (2) the personal privacy interests of the student athlete in reaching that agreement outweighs any
96 legitimate public interest in obtaining that information. Therefore, NIU does not release student
97 athlete NIL agreements publicly and would request that such information not be released publicly
98 through this litigation, which is a loophole to the protection of the student personal privacy interests
99 that is recognized under federal law (FERPA) and Illinois state law (FOIA).

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103 9. These are personal arrangements that are made by individual student athletes with their
104 new-found rights to seek compensation for the use of their name, image and likeness, not related
105 to the school they attend. If redaction and sealing is denied, the personal financial information of

106 NIU student athletes will be subjected to unwarranted exposure and public scrutiny, when these
107 student athletes and the institution they attend (Northern Illinois University) are not parties to this
108 litigation. There will be a chilling effect on student athletes to enter into NIL agreements if those
109 arrangements are suddenly publicly accessible through discovery in litigation that they did not
110 initiate or participate in directly.

111 10. Continuing to keep this information redacted and sealed is the least restrictive means for
112 protecting this information. This allows the parties to use the information for purposes of the case,
113 but does not unnecessarily expose the personal financial information of student athletes who are
114 not a part of the case to the public. A less restrictive alternative is not immediately known to NIU.

115 11. For the reasons stated above in this Declaration in Support of Redacted and Sealed Records
116 under the Joint Administrative Omnibus Motion to Seal, Northern Illinois University requests that
117 this Honorable Court continue to redact and seal NIU Materials identified above as provisionally
118 filed by the parties earlier in this case.

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120 Executed this 29th day of September 2023 in DeKalb, Illinois.
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